

# News with Clout

Providing Restructuring, Turnaround & Insolvency Solutions

## **SIMPLIFIED LIQUIDATION FOR MSMEs**

As part of the Federal Government's reform of the Australian insolvency framework which commenced on 1 January 2021, a simplified liquidation process was introduced along with a debt restructuring process (See News with Clout – December 2020 issue).

It is claimed the streamlined liquidation is designed to reduce the 'red tape' that allegedly burdens stakeholders with time and effort as well as increased costs of putting poor performing companies down. Frankly, to us it appears as though they have taken the model of a liquidation from the big city firms and are trying initiatives to reduce the time involved in attending to "smaller" liquidations.

The changes focus primarily on the investigation and reporting requirements of the Liquidator.

To be eligible for the streamlined process the company must have total liabilities of less than \$1 million and also have all tax lodgements up to date. Note this is lodged not paid.

The Government has attempted to guard against abuse of the new system for illegal phoenixing where a company will be prevented from using the simplified liquidation process if a director of the company or the company itself has previously used either the simplified liquidation process or debt restructuring process, within 7 years.

The other key features of the simplified process include:

7. Declaration by company's director(s) that the company satisfies the eligibility requirements for the simplified process and must provide the Liquidator with a ROCAP within 5 business days.
8. The appointed Liquidator may elect to adopt the simplified process if the eligibility criteria has been satisfied. Election must be made within 20 business days from the commencement of the liquidation.

1. Creditors (at least 25% in value) can request that the simplified process is not adopted if they believe it is either not suitable for the company or would not provide the best outcome for creditors.
2. Reverts to a creditors' voluntary liquidation if the company no longer satisfies the eligibility criteria or circumstances of wrongdoing have been uncovered. Any misconduct to be reported to ASIC.
3. Liquidator required to report to creditors within 3 months of the commencement of the liquidator regarding:
  - i. Work performed to date;
  - ii. Estimate of when liquidation will be finalised; and
  - iii. Likelihood of dividend to creditors.
4. No meetings of creditors or committees of inspection. Matters determined by creditors are decided via the 'proposal without a meeting process'. Creditors are given a minimum of 15 business days to respond to proposal.
5. The Liquidator may declare and distribute a dividend only once among creditors.
6. An unfair preference is not voidable if the creditor has received no more than \$30,000 in a single transaction or cumulative total of multiple transactions (amongst other legislative criteria).

It appears to us the only real change is that Liquidators are not required to report to ASIC if there are limited funds for a distribution as currently the position, and we can wait till all things are finished before we do a distribution rather than distribute funds when available and a second distribution later on. Hardly a streamline.

As ever we welcome your enquiries.



# NEWS WITH CLOUT

Offering Corporate & Personal Solvency Solutions

---

**Apart from Formal Insolvency Services at Clouts we also Offer:-**

Orchestrating Informal Arrangements with Creditors

Monitoring Businesses in Workout Situations

Conducting Negotiations with Secured & Unsecured Creditors

Business Risk Minimisation Reviews

Forensic Accounting Assignments

Business Valuations

Internal Control Reviews

Small Business Courses

***Official Website***

**[www.cloutassociates.com.au](http://www.cloutassociates.com.au)**

***Mid North Coast Office***

Tel: (02) 6650 5888

Fax: (02) 6651 9393

***Northern Rivers Office***

Tel: 1300 886 006

Fax: (02) 6674 1979

Email: [admin@cloutassociates.com.au](mailto:admin@cloutassociates.com.au)

***Clout & Associates Senior Representatives***

Michael Brennan

Email: [mbrennan@cloutassociates.com.au](mailto:mbrennan@cloutassociates.com.au)

Morgan Chubb

Email: [mjchubb@cloutassociates.com.au](mailto:mjchubb@cloutassociates.com.au)

David Morgan

Email: [dmorgan@cloutassociates.com.au](mailto:dmorgan@cloutassociates.com.au)